

**PORT OF PORTLAND
And
EMERSON HARDWOOD**

SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

This SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY ("Sale Agreement"), dated effectively ~~November 13, 2003~~ ^{November 13, 2003} ("Effective Date"), is by and between THE PORT OF PORTLAND, a port district of the State of Oregon (the "Port"), and EMERSON HARDWOOD COMPANY, a corporation organized under the laws of the State of Oregon and authorized to do business in Oregon ("Emerson").

AGREEMENT

1. SALE AND PURCHASE

1.1 Description of Sale Parcel

Emerson agrees to purchase from the Port and the Port agrees to sell to Emerson a parcel of improved property consisting of either all of "Parcel 2" or the "Parcel 2 Remainder," as described herein, located at 2303 NW Front Avenue, Portland, Oregon. "Parcel 2" consists of approximately 2.822 acres (122,926 square feet) of land and is described as follows: "Parcel 2, Partition Plat No. 1994-116," recorded in the Multnomah County records on September 29, 1994, Document Number 94-145444, shown on the attached **Exhibit A**. The "Parcel 2 Remainder" consists of the southerly, approximately 2.52 acres (109,727.64 square feet) of Parcel 2, as approximately shown on the attached **Exhibit B**, subject to adjustment based on the Lot Line Adjustment described below. As used herein, the term "Sale Parcel" shall mean the parcel, whether Parcel 2 or the Parcel 2 Remainder, that Emerson shall purchase pursuant to the terms outlined in this Sale Agreement. The Sale Parcel is improved and shall be sold with an approximately 54,000 square foot warehouse, referred to as "Warehouse 4," in addition to the Rail Improvements described in Section 1.5. The Sale Parcel shall also be sold subject to the Bear Springs Lease and the Port's Remediation Obligation, all described below.

1.2 LOCAL 8 Permit and Right of First Refusal

Local 8 of the International Longshoremen's and Warehousemen's Union ("Local 8") has an existing permit and right of entry ("LOCAL 8 Permit") to use the northerly, approximately 0.303 acres of Parcel 2, as approximately shown on **Exhibit B ("Parking Lot Portion")**. Local 8 also has a right under a first right of refusal to purchase the Parking Lot Portion ("LOCAL 8 ROFR"). The Parking Lot Portion is paved and is currently being used for vehicle parking by Local 8 in conjunction with its adjacent union hall. Both the Local 8 Permit and LOCAL 8 ROFR expire on June 10, 2004. Local 8 is currently making a determination pursuant to the Local 8 ROFR to notify the Port whether Local 8 desires to purchase the Parking Lot Portion. If Local 8 decides to exercise its right under the Local 8 ROFR, Local 8 contemplates assigning such right to the Columbia River Pensioners Memorial Association (the "Association"), which will purchase the Parking Lot Portion. If Local 8 exercises the Local 8 ROFR, Closing of the

USEPA SF



Sale Parcel shall be contingent on the Port obtaining approval of a "**Lot Line Adjustment**" to legally separate the Parking Lot Portion from the rest of Parcel 2, subject to Section 10.3. The term "**Parcel 2 Remainder**" will mean the remainder of Parcel 2 after the Lot Line Adjustment to remove the Parking Lot Portion. Upon execution of a letter of intent between the Association and the Port for a sale of the Parking Portion, the Association will then have sixty (60) calendar days to complete its due diligence of the Parking Lot Portion. The Port is in the process of preparing the application for the Lot Line Adjustment. If the Association, for any reason, does not purchase the Parking Lot Portion, Emerson shall purchase all of Parcel 2 and the associated Rail Improvements (described in Section 1.5), subject to the terms outlined in this Sale Agreement. In such event, the Port shall cancel the Local 8 Permit to use the Parking Lot Portion effective at Closing of the sale of Parcel 2 to Emerson.

1.3 Utility Separation/Reconnection

Whether the Sale Parcel consists of Parcel 2 or the Parcel 2 Remainder, certain utilities that serve the Parking Lot Portion, the Parcel 2 Remainder and the adjacent ILWU property may need to be separated and reconnected. Any such separation and reconnection will be Emerson's responsibility and at its cost. The utilities include an irrigation system and a lighting system in the Parking Lot Portion and a storm drain that serves the northern portion of Warehouse 4, the Parking Lot Portion and the adjacent ILWU Union Hall property. Emerson is responsible for verifying the accuracy and completeness of this and all other information provided by the Port.

1.4 Bear Springs Lease

The Parcel 2 Remainder, consisting of Warehouse 4 and adjacent yard area, is currently leased by Western International Forest Products, Inc. pursuant to a lease from the Port ("**Bear Springs Lease**"). The Bear Springs Lease expires on January 31, 2005. The Sale Parcel will be sold subject to the Bear Springs Lease, and at Closing Emerson shall unconditionally assume all obligations of the Port, including all responsibilities of the Port as landlord, under the Bear Springs Lease, including any such obligations that survive termination of the Bear Springs Lease. At Closing the Port shall transfer to Emerson the balance of the "Security Deposit" as such term is defined in the Bear Springs Lease, after deducting any amounts the Port is entitled to deduct from the Security Deposit under the Bear Springs Lease. In addition, the Port will request that Bear Springs provide an estoppel certificate to Emerson within seven (7) calendar days prior to Closing, certifying as to the matters stated in Section 11.3 of the Bear Springs Lease.

1.5 Rail Improvements

The railroad track and railroad switches ("**Rail Improvements**") located along the east side of Warehouse 4 within the street right-of way are owned by the Port. At Closing of the Sale Parcel to Emerson, the Port will convey ownership of the Rail Improvements to Emerson by a Bill of Sale and will quitclaim any rights the Port has to use of the underlying land. Emerson shall be responsible for verifying the condition of the Rail Improvements, the existing and long term availability of rail service to the Sale Parcel, the suitability of such rail service for Emerson's needs, and the ownership and rights to use the underlying real property for Emerson's intended use.

1.6 BES Permit

The City of Portland's Bureau of Environmental Services sent a letter to the Port on September 15, 2003 requesting to install monitoring equipment on Parcel 2 to detect potential settlement, if any, resulting from the City's Combined Sewer Overflow project. A copy of the letter and map showing the City's proposed monitoring sites on Parcel 2 is attached as **Exhibit C**. The Port is willing to provide the City with a permit for this monitoring project, with the permit terminating as of the date of Closing ("**City Monitoring Permit**"). Failure of the City to remove its monitoring equipment by Closing shall not be a condition of Closing. Emerson agrees to work with the City if the City desires to maintain the monitoring equipment beyond Closing and to enter into a permit or make other arrangements with the City to allow the City to maintain its monitoring equipment on the Sale Parcel beyond the date of Closing.

1.7 Investigation and Clean Up

1.7.1 Remediation Obligation

The Port has entered into a Voluntary Clean Up Program Agreement ("**VCPA**") with the Oregon Department of Environmental Quality ("**DEQ**") for the north end of Terminal 1, including Parcel 2. Emerson acknowledges that the Port has provided Emerson with copies of the VCPA and the VCPA environmental reports related to Parcel 2. Pursuant to the VCPA, the Port agrees to complete its investigation, together with any required remediation of Parcel 2, to a level required to meet DEQ standards for industrial use in accordance with Oregon Administrative Rules as directed by DEQ (collectively, such investigation and remediation, if any, constitute the Port's "**Remediation Obligation**"). The selected cleanup remedy may include engineering or institutional controls to manage contamination left in place. The Port will require access to the Sale Parcel following Closing to fulfill its Remediation Obligation. The Port's Remediation Obligation shall be deemed completed once DEQ issues the Port a no further action or completion of cleanup determination. Until completion of the Port's Remediation Obligation, the Port will promptly notify Emerson of (i) any required investigation or remediation activities; (ii) the Record of Decision or No Further Action determination from DEQ; and (iii) any notice regarding actual or potential liability arising from a hazardous substance release associated with the Sale Parcel.

1.7.2 Cooperation with DEQ Regarding Institutional and Engineering

Controls

Emerson acknowledges and agrees that the Remediation Obligation may not be completed before Closing, and may include the imposition by DEQ of institutional and engineering controls and their implementation by the Port and Emerson, and the on-going monitoring of both currently existing and future monitoring wells on the Sale Parcel, after Closing and after the Record of Decision or No Further Action determination from DEQ referenced in Section 1.7.1 of this Sale Agreement. Emerson agrees to such institutional and engineering controls as may be a condition of the final remedy selected by DEQ, and agrees to cooperate with the Port and DEQ as necessary regarding the placement and implementation of such DEQ-required restrictions after Closing.

1.7.3 Access to Sale Parcel for Remediation

The Port and its representatives, including DEQ, shall have the right to enter upon the Sale Parcel to implement any remedial investigation, source control, feasibility study, monitoring, or other remedial activities that are required of the Port by DEQ. In connection with this right of continued access, the Port will retain an easement for access to the Sale Parcel by a separate Easement Agreement which will be recorded at Closing. Except in cases of emergency, such entry shall be made with reasonable advance notice and during normal business hours, when practical, and shall not unreasonably interfere with the rights and operations of Emerson or any agents or contractors of Emerson on the Sale Parcel.

1.7.4 Survival

The foregoing covenants of Emerson and the Port under this Section 1.7 shall survive and be enforceable following Closing.

2. PURCHASE PRICE FOR THE SALE PARCEL

If Local 8 does not exercise the Local 8 ROFR to purchase the Parking Lot Portion, or if Local 8 exercises the Local 8 ROFR but the Lot Line Adjustment has not been obtained by April 1, 2004 as provided in Section 10.3 of this Sale Agreement, the purchase price for Parcel 2, including Warehouse 4, will be TWO MILLION TWO HUNDRED FORTY THOUSAND SEVEN HUNDRED AND EIGHTY DOLLARS (\$2,240,780.00). If Local 8 exercises the Local 8 ROFR to purchase the Parking Lot Portion and the Lot Line Adjustment is obtained by April 1, 2004, the purchase price for the Parcel 2 Remainder, including Warehouse 4, will be TWO MILLION ONE HUNDRED FIFTEEN THOUSAND FOUR HUNDRED AND SIXTY DOLLARS (\$2,115,460.00). The purchase price to be paid by Emerson under this Section 2 shall be referred to as the "**Purchase Price for the Sale Parcel.**"

3. ESCROW AGENT; EARNEST MONEY

Emerson has deposited with Chicago Title Insurance Company of Portland, whose address is 888 SW 5th Avenue, Suite 930, Portland, Oregon 97204 ("**Escrow Agent**") earnest money for the Sale Parcel in the amount of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) ("**Earnest Money**"). The Earnest Money has been deposited in an interest-bearing account which provides no penalty for immediate withdrawal. The interest accruing on the Earnest Money shall be credited to the Purchase Price for the Sale Parcel at Closing. In the event Closing does not occur, the Earnest Money and all of the accumulated interest shall be disbursed in accordance with the provisions of Sections 10.4, 13, and 16 of this Sale Agreement.

4. PAYMENT OF PURCHASE PRICE FOR THE SALE PARCEL

At Closing (defined in Section 5), Emerson shall pay by immediately available funds the remaining Purchase Price for the Sale Parcel due, after credit for Earnest Money and interest earned thereon is given. In addition to the Purchase Price for the Sale Parcel, Emerson agrees to pay Emerson's share of Closing costs, pursuant to Section 5 of this Sale Agreement.

5. CLOSING

For purposes of this Sale Agreement, "**Close**," "**Closing**," or "**Closed**" shall mean the date on which all of the necessary documents have been deposited with the Escrow Agent and the Escrow Agent has: a) disbursed the full amount of the Purchase Price for the Sale Parcel to the Port; b) recorded, on behalf of Emerson, the Deed for the Sale Parcel referred to in Section 6 of this Sale Agreement; c) issued or authorized the issuance of the title insurance policy referred to in Section 11 of this Sale Agreement; and (d) complied with all other escrow instructions of the Port and Emerson imposed as a condition of Closing. Closing shall occur no later than fifteen (15) calendar days following satisfaction or waiver of the Contingencies to Closing described in Section 10 of this Sale Agreement, but no later than April 1, 2004 (the "**Closing Date**") unless extended by mutual written agreement of the parties. This Sale Agreement shall be Closed in the offices of the Escrow Agent. Each party will pay one-half (1/2) of the escrow fee. Emerson shall also pay any recording fees and other Closing costs normally attributable to a buyer in Multnomah County, Oregon. Emerson and the Port hereby authorize their respective attorneys to execute and deliver to the Escrow Agent any additional or supplemental escrow instructions as may be necessary or convenient to implement the terms of this Sale Agreement and to Close this transaction. In the event of any conflict between such additional or supplemental escrow instructions and the express terms of this Sale Agreement, the terms of this Sale Agreement shall control.

6. DEED

At Closing, the Port shall execute and deliver to Emerson a Special Warranty Deed ("**Deed**") in substantially the form set forth in **Exhibit D** conveying the Sale Parcel to Emerson, subject only to the Permitted Encumbrances (defined in Section 10.2).

7. TAXES

There shall be no proration of taxes. Emerson shall have full responsibility for payment of all real property taxes applicable to the Sale Parcel whether accruing before or after Closing. Emerson is responsible at its own expense for investigating all tax matters, determining all necessary filing and qualification requirements, meeting all necessary filing due dates, and meeting all other regulatory requirements.

8. POSSESSION

Emerson shall be entitled to possession of the Sale Parcel immediately upon Closing.

9. PORT NOT RESPONSIBLE FOR ANY RAIL SERVICE TO SALE PARCEL

The Port does not warrant or make any guarantee or representation that the Sale Parcel is capable of being rail-served, either now or in the future. The Port shall have no responsibility for negotiating on behalf of Emerson with railroad companies, or for resolving any issues that may result with other tenants or users of other property concerning the provision and operation of rail service to or on the Sale Parcel including, but not limited to, concerns about congestion or service. Nor shall the Port have any responsibility for the provision or costs of rail service to the Sale Parcel, now or in the future including, but not limited to, extending any rail tracks to or near the Sale Parcel, installing switches, crossings, or any other equipment. Emerson shall be

responsible for all costs associated with providing, operating and maintaining rail service to the Sale Parcel including, but not limited to: 1) negotiating, with, and satisfying the requirements of the railroad(s), the Port, and any tenants or users of other property that may be impacted by the provision and operation of rail service to the Sale Parcel; 2) installing, operating and maintaining railroad tracks and rail switches to serve the Sale Parcel including, but not limited to, those associated with Emerson's industry spur and with any rail lead tracks or other extension tracks required to connect Emerson's industry spur to the railroads' operating tracks; and, if required in the future, 3) relocating, extending or removing railroad tracks and rail switches that may be required to install and maintain rail service to the Sale Parcel including, but not limited to, the requirement to relocate Emerson's rail switch(es) and rail spur(s) in the event new main or lead tracks are added, moved, modified, or removed. The foregoing covenants of Emerson under this Section shall survive and be enforceable following Closing.

10. CONTINGENCIES TO CLOSING

The following contingencies of sale (collectively, "**Contingencies**") must be satisfied not later than the Closing Date or other date otherwise indicated below:

10.1 Emerson's Due Diligence

Within sixty (60) calendar days of the Effective Date (the "**Due Diligence Period**"), Emerson's completion, at Emerson's sole cost and expense, of all surveys, tests, audits and studies as Emerson deems necessary to enable Emerson to approve all aspects of the Sale Parcel, including without limitation zoning, environmental condition, soil and ground water conditions in and about the Sale Parcel, condition of the improvements, rail service and rail-related improvements, and ability for Emerson to use or develop Parcel 2 as may be desired by Emerson. Such due diligence shall also include, without limitation, the verification by Emerson of the types, location, size, capacity and other specifications for existing utilities available to the Sale Parcel and the adequacy of such utilities for Emerson's intended use of the Sale Parcel. Emerson's entry onto Parcel 2 is subject to the terms of the Permit and Right of Entry to be issued to Emerson by the Port promptly following execution of this Sale Agreement. Emerson shall provide to the Port, at no cost to the Port, copies of reports resulting from any soils and/or environmental studies that Emerson may conduct within ten (10) calendar days of completing such studies. The Port shall have the right to reproduce and use said reports. Emerson may terminate this Sale Agreement without liability to either party if Emerson determines, based on Emerson's investigation, that the Sale Parcel is not suitable, for any reason, for Emerson's intended use by giving written notice of such election prior to the expiration of the Due Diligence Period; provided, however, if Emerson does not provide such notice of termination prior to the end of the Due Diligence Period, then Emerson shall be deemed to have waived such contingency and right to terminate. The Port reserves the right to complete supplemental environmental work on the Property, at the Port's cost. The environmental studies by Emerson and the Port shall establish the baseline environmental condition of the Property as of Closing.

10.2 Title Report

Within thirty (30) calendar days of the Effective Date, Emerson's acceptance of the Preliminary Title Report (defined below) for Parcel 2 as provided in this Section 10.2. Emerson acknowledges that it has received an updated preliminary title report, issued by the Escrow

Agent, dated October 17, 2003, Order No. 273304, showing the condition of the title to the Parcel 2 Remainder, a copy of which is attached hereto as **Exhibit E ("Preliminary Title Report for the Parcel 2 Remainder")** and an updated preliminary title report, issued by the Escrow Agent, dated October 16, 2003, Order No. 274707, showing the condition of the title to the Parking Lot Portion, a copy of which is attached hereto as **Exhibit F ("Preliminary Title Report for the Parking Lot Portion")**, collectively the **"Preliminary Title Reports."** Unless Emerson gives written notice to the Port within such thirty-day period that any of the exceptions listed in the Preliminary Title Reports are not acceptable to Emerson, Emerson shall be deemed to have accepted the Preliminary Title Reports. If Emerson notifies the Port of any objections to exceptions in the Preliminary Title Report, the Port, within ten (10) calendar days thereafter shall notify Emerson in writing whether the Port will cause the exception(s) to be removed at or prior to Closing. If the Port fails to respond to Emerson's notice of objections or if the Port fails to agree to satisfy such objections, Emerson shall have the right to terminate this Sale Agreement within ten (10) calendar days after the Port's ten-day period to respond. Emerson's failure to terminate this Sale Agreement within such ten-day period shall be deemed a waiver of such objections. All special exceptions to title not removed by the Port or waived by Emerson as provided in this Section 10.2, together with those matters, if any, created or suffered by Emerson, shall be deemed **"Permitted Encumbrances."** The Permitted Encumbrances shall also include without limitation the general exceptions to a standard owner's title insurance policy unless Emerson elects to remove such general exceptions and elects to pay for extended coverage title insurance pursuant to Section 11.

10.3 Lot Line Adjustment

If Local 8 exercises its right under the Local 8 ROFR to purchase the Parking Lot Portion, Closing will be contingent on the Port obtaining, prior to Closing, City of Portland approval of the Lot Line Adjustment to legally separate the Parking Lot Portion from the Parcel 2 Remainder, except as hereinafter provided in this Section 10.3. In the event that the Lot Line Adjustment has not been obtained by April 1, 2004, Emerson may purchase the entire Parcel 2 by no later than April 15, 2004, subject to the following conditions: (a) Emerson will assume all obligations of the Port under that certain sale agreement to be executed between the Port and the Association for the Parking Lot Portion (**"Association Sale Agreement"**) to complete the Lot Line Adjustment and then sell the Parking Lot Portion to the Association as provided in the Association Sale Agreement; and (b) Emerson will assume the Local 8 Permit and extend the "Effective Date" as defined in the Permit until the earlier of (i) the sale of the Parking Lot Portion to the Association; or (ii) the date that is four (4) months following the Closing Date for Emerson's purchase of Parcel 2. Upon Emerson's assumption of the Association Sale Agreement as provided in the preceding sentence, the Port will also assign to Emerson the Port's rights in any amounts deposited by the Association into escrow as earnest money for the purchase of the Parking Lot Portion by the Association. Notwithstanding this Section 10.3, neither the Association nor Local 8 are intended third party beneficiaries under this Sale Agreement, and neither the Association nor Local 8 shall have any rights to enforce the terms hereof.

10.4 Waiver/Satisfaction of Contingencies

The Contingencies set forth in Section 10.1 and 10.2 may be waived only by Emerson. The Contingency set forth in Section 10.3 may not be waived by either party. Unless all

Contingencies are satisfied or waived by expiration of the time limits as set forth above, except as provided in Section 10.3, this Sale Agreement shall terminate without liability to either party. In the event this Sale Agreement is timely terminated on the basis of the failure of a Contingency as stated above, the Earnest Money, together with the interest earned thereon, shall be refunded to Emerson, and neither party shall have any further liability under this Sale Agreement, except any liabilities which are specifically stated to survive termination.

11. TITLE INSURANCE FOR THE SALE PARCEL

At Closing, the Port shall authorize the Escrow Agent to issue Emerson a standard owner's policy of title insurance, insuring the vesting of fee title to the Sale Parcel in Emerson in the amount of the Purchase Price for the Sale Parcel, subject only to the Permitted Encumbrances. The Port will pay the premium for such standard title insurance policy. Emerson shall pay the additional premium charged for extended title insurance coverage and any costs associated with obtaining such coverage, such as any survey work, if Emerson desires to obtain extended title insurance coverage.

12. PROPERTY CONDITION

Emerson acknowledges that Emerson will have or has had an opportunity prior to Closing to inspect the Sale Parcel, including Warehouse 4, the Rail Equipment and all other improvements located on the Sale Parcel, and prior to Closing agrees to accept the Sale Parcel, including Warehouse 4, the Rail Equipment and all other improvements located on the Sale Parcel, in its "AS-IS" condition as of the date of the Closing. Emerson acknowledges that Emerson has ascertained for itself the value and condition of the Sale Parcel, and has not relied upon any implied or express warranties of the Port or the Port's employees or agents in connection with the Sale Parcel, the purchase thereof, or the availability of Emerson's or the Sale Parcel's qualification for any local, state, or federal incentive, benefit, or grant program. Except as otherwise expressly provided in this Sale Agreement, the Port hereby specifically disclaims any warranty, guarantee, or representation, oral or written, either past, present, or future, of, as to, or concerning the nature and/or condition of the Sale Parcel, including, without limitation, environmental condition, soil and geology of the Sale Parcel, zoning of the Sale Parcel, the availability of utilities, road access, and rail service needed for Emerson's intended purposes and the suitability thereof for any structure located thereon or which Emerson may construct thereon, and the condition, suitability, or fitness for a particular purpose (whether or not known to the Port) of any improvement located on the Sale Parcel, or the Sale Parcel itself, for Emerson's intended use. It is agreed that the Port will not be responsible for, and Emerson hereby releases the Port from, any loss, damage, or costs, which may be incurred by Emerson by reason of any condition of the Sale Parcel. Emerson agrees that the Port will not be responsible for any loss, damage, or costs which may be incurred by Emerson by reason of any condition of the Property.

13. CHANGE IN SALE PARCEL

If the Sale Parcel is damaged or destroyed after the Effective Date and prior to Closing in an amount equal to at least twenty-five percent (25%) of the Purchase Price, either party may terminate this Sale Agreement upon written notice, without liability to the other party, and a full refund of the Earnest Money shall be made to Emerson, provided that Emerson shall be liable for

any such damage to or destruction of the Sale Parcel caused by Emerson. If the Sale Parcel is rezoned after the Effective Date and prior to Closing or there is a notice of possible rezoning of the Sale Parcel prior to Closing, either party shall have the right to terminate this Sale Agreement upon written notice, without liability to either party, and a full refund of the Earnest Money shall be made to Emerson.

14. REPRESENTATIONS AND WARRANTIES OF EMERSON

In addition to any other covenants, representations, or warranties of Emerson contained in this Sale Agreement, the following constitute representations and warranties of Emerson to the Port:

14.1 Legal Authority

Emerson has the legal power, right, and authority to enter into this Sale Agreement and the instruments referred to in this Sale Agreement and to consummate the transactions contemplated in this Sale Agreement.

14.2 Corporate Action

All requisite action (corporate, trust, partnership, or otherwise) has been taken by Emerson in connection with entering into this Sale Agreement and the instruments referred to in this Sale Agreement and with the consummation of the transactions contemplated herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

14.3 Authorized Agent

The persons executing this Sale Agreement and the instruments referred to in this Sale Agreement on behalf of Emerson have the legal power, right, and actual authority to bind Emerson to the terms and conditions of this Sale Agreement. A corporate resolution will be delivered to the Escrow Agent promptly upon execution of this Sale Agreement, confirming this authorization.

14.4 Binding Obligations

This Sale Agreement and all documents required by it to be executed by Emerson are and shall be valid and legally binding obligations of Emerson and shall be enforceable against Emerson in accordance with their terms.

14.5 No Conflict

Neither the execution and delivery of this Sale Agreement and documents referred to herein, nor the incurring of the obligations set forth in this Sale Agreement, nor the consummation of the transactions contemplated, nor compliance with the terms of this Sale Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of or constitute a default under any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease, or other agreements or instruments to which Emerson is a party.

15. REPRESENTATIONS AND WARRANTIES OF THE PORT

The Port represents and warrants to Emerson that, upon Commission approval, the Port has the legal power, right, and authority to enter into this Sale Agreement, and any document referenced herein, under the terms stated herein, and the persons executing this Sale Agreement and the instruments referred to in this Sale Agreement on behalf of the Port have the legal power, right, and actual authority to bind the Port to the terms and conditions of this Sale Agreement.

16. DEFAULT/FAILURE TO CLOSE

If Closing does not occur as contemplated by this Sale Agreement due to a default by either party, the remedies of the parties shall be as specified below:

16.1 Default by the Port

In the event the sale does not Close by the Closing Date as a result of any default of this Sale Agreement by the Port, Emerson shall be entitled to a return of the Earnest Money as liquidated damages and the interest thereon and the Port shall pay all escrow fees. In such an event, this Sale Agreement shall terminate and neither party shall have any further rights or obligations under this Sale Agreement, except pursuant to any indemnity provisions which, by their nature, are intended to survive termination of this Sale Agreement. In the alternative, Emerson shall be entitled to sue the Port for specific performance but for no liquidated or other damages.

16.2 Default by Emerson

In the event the sale does not Close by the Closing Date by reason of any default of this Sale Agreement by Emerson, Emerson and the Port agree that the Port shall be entitled to retain the Earnest Money, plus interest thereon, as liquidated damages. The Port and Emerson agree that it would be impractical and extremely difficult to estimate the damages that the Port may suffer. Therefore, Emerson and the Port agree that a reasonable estimate of the total damages that the Port would suffer in the event that Emerson defaults and fails to complete the purchase of the Sale Parcel is and shall be an amount equal to the Earnest Money. In the event of such default, the Port may direct the Escrow Agent to immediately pay the Earnest Money, plus the interest earned thereon, to the Port upon receipt of a signed statement from the Port that it has complied in all respects with the terms of this Sale Agreement and that Emerson is in default of this Sale Agreement. The Escrow Agent is hereby instructed that the Escrow Agent shall not require Emerson's written approval as a condition precedent to the disbursement of the Earnest Money to the Port. In addition, in the event of such termination as a result of a breach by Emerson, this Sale Agreement shall terminate and neither party shall have any further rights or obligations under this Sale Agreement, except pursuant to any indemnity provisions which, by their nature, are intended to survive termination of this Sale Agreement. In the event the sale fails to Close by reason of any default by Emerson, Emerson shall also pay all escrow fees.

16.3 Liquidated Damages

With respect to the liquidated damages referenced in Sections 16.1 and 16.2 above, the parties have specifically negotiated the amount of these damages. This amount shall be the full, agreed, and liquidated damages for the breach of this Sale Agreement by either party, and all other claims for money damages are expressly waived by both parties. The payment of this

amount as liquidated damages is not intended as a forfeiture or penalty but is intended to constitute liquidated damages to the applicable party.

16.4 Default After Closing

The above Sections 16.1, 16.2, and 16.3 apply only to a default that causes the sale contemplated by this Sale Agreement not to Close. Should a default of this Sale Agreement occur after Closing, then the non-defaulting party shall have available to it, and shall be entitled to pursue against the defaulting party, all available remedies, at law and in equity, including, but not limited to, money damages or equitable relief, such as specific performance, where specific performance is possible.

16.5 No Breach

In no event shall the Port be in default of this Sale Agreement if a court order prohibits the Port from performing as otherwise required hereunder. In addition, in no event shall Emerson be in default under this Sale Agreement if a court order prohibits Emerson from performing as otherwise required hereunder.

17. NO THIRD-PARTY BENEFIT; NO ASSIGNMENT

Nothing in this Sale Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties. No assignment by Emerson of its rights under this Sale Agreement shall be allowed without the prior written consent of the Port, in the Port's sole discretion.

18. ATTORNEY FEES

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Sale Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney fees and all other fees, costs, and expenses actually incurred as reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees and costs shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

19. NOTICES

All notices required under this Sale Agreement shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand (including by overnight courier) to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

To the Port at:

The Port of Portland
Property & Development Services
Attention: Peggy J. Krause
121 NW Everett

Portland, Oregon 97209
Facsimile No.: (503) 944-7466

With a copy to:

The Port of Portland
Legal Department
121 NW Everett
Portland, Oregon 97209
Facsimile No.: (503) 944-7038

To Emerson at:

Chris Mongrain
President and COO
Emerson Hardwood Company
2279 NW Front Avenue
Portland, OR 97209

The date of service of such notice by mail is agreed to be three (3) days after the date such notice is deposited in a post office of the United States Post Office Department, postage prepaid or, if delivered by hand, then the actual date of hand delivery. Notice may also be given by facsimile. The burden of proof concerning receipt of the facsimile will be on the sender who may satisfy the burden by presenting a receipt of the transmission showing the date the transmission successfully occurred, the facsimile number that the transmission was sent to, the name of the party to whom the facsimile was sent, and a description of the document sent.

20. BROKERS

Emerson and the Port each represent to one another that they have not dealt with any leasing agent or broker in connection with this Sale Agreement and each (for purposes of this Section only, the "Indemnitor"), to the extent permitted by applicable law, agrees to indemnify and hold harmless the other from and against all damages, costs, and expenses, including attorney, accountant and paralegal fees, arising in connection with any claim of an agent or broker alleging to have been retained by the Indemnitor in connection with this Sale Agreement. This obligation shall survive and be enforceable following the Closing or termination of this Sale Agreement.

21. PERFORMANCE AND NON-WAIVER

Time is of the essence in the performance of the obligations set forth herein. Failure to enforce any provision of this Sale Agreement shall not constitute a waiver of that provision or the future prompt enforcement of that provision. This Sale Agreement may not be modified, except by the mutual, written, and fully executed agreement of the parties.

22. GOVERNING LAW

This Sale Agreement shall be governed, construed and enforced under the laws of the State of Oregon.

23. NO MERGER

The waivers, covenants, indemnities, representations, obligations, and warranties contained in this Sale Agreement shall all survive the Closing and shall not merge into the Deed and the recordation of it in the official records.

24. SEVERABILITY

If any provision of this Sale Agreement is held to be invalid or unenforceable, the remainder of this Sale Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Sale Agreement shall be valid and enforceable to the fullest extent permitted by law.

25. HEADINGS AND TABLE OF CONTENTS

Section headings and the table of contents contained in this Sale Agreement are for convenience in reference and are not intended to define or limit the scope of any provision of this Sale Agreement.

26. EXHIBITS INCORPORATED BY REFERENCE

All Exhibits cited in this Sale Agreement are incorporated by reference into this Sale Agreement for all purposes.

27. INTERPRETATION OF SALE AGREEMENT

This Sale Agreement is the result of arms-length negotiations between the Port and Emerson. Therefore, any ambiguity subject to interpretation contained herein shall not be construed against the Port by reason of its preparation of this Sale Agreement.

28. DEFINED TERMS

Capitalized terms shall have the meaning given them in the text of this Sale Agreement.

29. NO LIMIT ON PORT'S POWERS

Nothing in this Sale Agreement shall limit, in any way, the power and right of the Port to exercise its governmental rights and powers, including its powers of eminent domain.

30. ENTIRE AGREEMENT

This Sale Agreement represents the entire agreement between the Port and Emerson relating to Emerson's purchase of the Sale Parcel, and supersedes all prior and contemporaneous agreements and communications regarding that subject. Emerson acknowledges that: (1) neither the Port nor the Port's agents or employees have made or been authorized to make any representations or promises with respect to this Sale Agreement or the making or entry into this Sale Agreement,

except those representations or promises expressly set forth in this Sale Agreement; and (2) Emerson has no right to rely upon and has not relied upon any representation or promise not expressly set forth in this Sale Agreement. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Sale Agreement. All oral agreements, if any, are void and expressly waived by Emerson and the Port.

31. COUNTERPARTS; FAXED SIGNATURES

This Sale Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Sale Agreement or any counterpart may be executed and delivered by facsimile transmission provided that an executed "hard copy" original follows promptly thereafter.

32. LAND USE

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH MAY LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

BUYER:

SELLER:

EMERSON HARDWOOD COMPANY By: <u>[Signature]</u> Name: <u>Chris Monerain</u> Title: <u>President CEO</u> <u>Agreed PS to sign</u> <u>for BBH</u> <u>11/5/03</u>	THE PORT OF PORTLAND By: <u>[Signature]</u> Bill Wyatt, as its Executive Director APPROVED AS TO LEGAL SUFFICIENCY FOR THE PORT OF PORTLAND: <u>[Signature]</u> Counsel for The Port of Portland APPROVED BY COMMISSION ON: Date: <u>November 12</u> , 2003
---	--



List of Exhibits

Exhibit A – Parcel 2 Drawing

Exhibit B – Parcel 2 Remainder and Parking Lot Portion Drawing

Exhibit C – City of Portland letter

Exhibit D - Special Warranty Deed Form

Exhibit E - Preliminary Title Report, Parcel 2 Remainder

Exhibit F – Preliminary Title Report, Parking Lot Portion

2 1/2" BRASS DISC
IN MONUMENT CASE
BELOW SURFACE

- YPC STAMPED "FOSTER 1834", MILD
- - SET 5/8" IRON ROD WITH YPC STAMPED "WAKER ASSOCIATES, INC"
- - SET BRASS SCREW WITH WASHER STAMPED "LS 2072"
- ✕ - CALCULATED POINT-HOT SET
- SA - SURVEY NUMBER
- YPC - YELLOW PLASTIC CAP
- PPH - PARTITION PLAT NUMBER



ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES AS PROVIDED BY O.R.S. 92.095 HAVE BEEN PAID AS OF SEPT 27 1994 DIRECTOR, DIVISION OF ASSESSMENT AND TAXATION MULTNOMAH COUNTY, OREGON

BY Carol Nichols
DEPUTY

APPROVALS

APPROVED THIS 12th DAY OF AUGUST 1994

EP. L. G...
ENGINEER'S DELEGATE
CITY OF PORTLAND

APPROVED THIS 29th DAY OF August 1994

M... I.H.
PLANNING DIRECTOR'S DELEGATE
CITY OF PORTLAND

APPROVED THIS 27th DAY OF SEPT. 1994

Dennis V...

COUNTY OF MULTNOMAH } SS

KNOW ALL PEOPLE BY THESE PRESENTS THAT THE PORT OF PORTLAND, A POLITICAL SUBDIVISION, AND THE OWNER OF THE LANDS REPRESENTED ON THE ANNEXED MAP AND MORE PARTICULARLY DESCRIBED IN THE ACCOMPANYING SURVEYOR'S CERTIFICATE, HAS CAUSED THE SAME TO BE SURVEYED AND PARTITIONED INTO THE PARCELS AND EASEMENTS AS SHOWN ON THE ANNEXED MAP. THERE ARE NO WATER RIGHTS APPURTENANT TO THIS PROPERTY.

CORY STREISINGER
GENERAL COUNCIL FOR
EXECUTIVE DIRECTOR

GEORGE M. MILLER
COMMISSION VICE PRESIDENT

ACKNOWLEDGEMENT STATE OF OREGON COUNTY OF MULTNOMAH } SS

THIS CERTIFIES THAT ON THIS 12 DAY OF AUGUST, 1994, BEFORE ME PERSONALLY APPEARED C. STREISINGER AND GEORGE M. MILLER, TO ME PERSONALLY KNOWN AND WHO BEING DULY SWORN DO SAY THAT THEY ARE THE EXECUTIVE DIRECTOR AND COMMISSION VICE PRESIDENT OF THE PORT OF PORTLAND, A POLITICAL SUBDIVISION, AND THAT THIS INSTRUMENT WAS SIGNED ON BEHALF OF SAID POLITICAL SUBDIVISION BY AUTHORITY OF ITS BOARD OF DIRECTORS, AND THAT THEY ACKNOWLEDGED TO ME THAT THE AFFIXED SIGNATURES ARE OF THEIR OWN FREE ACT AND DEED.



Charles L. Wiley
WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR LAST WRITTEN ABOVE.

INITIAL POINT BEING A SET BRASS SCREW WITH WASHER STAMPED "LS 2072" AT THE

BEING LOCATED NORTH 35° 39' 51" EAST A DISTANCE OF 341.24 FEET FROM A FOUND 5/8" IRON ROD WITH A YELLOW PLASTIC CAP STAMPED "W&H. PACIFIC" AT THE INITIAL POINT OF PARTITION PLAT NO. 1991-35,

TOWNSHIP 1 NORTH, 1
AND A PORTION OF LC
ADDITION", CITY OF

NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO PARTITION THE PORT OF PORTLAND INTO TWO PARCELS THE BASIS OF BEARINGS BEING 39° 51' 30" EAST, 341.24 FEET, AND SHOWN IN THE CENTERLINE OF NW 21 TO SAID CENTERLINE AS PER PAGE 47, PLAT RECORDS, IN THE SOUTHERLY LINE WAS DE AND WHICH FIT WITHIN 0.03 THE INTERSECTION OF NW 21 THE DISTANCE OF 478.89 FEET WAS ESTABLISHED BY HOLDING AFORMENTIONED INTERSECTION THE NORTHWEST CORNER OF POINT WITH A LINE PARALLEL ESTABLISHED CENTERLINE OF VACATED NW SHERLOCK AND THE SOUTHERLY LINE OF THE SOUTHERLY LINE OF THE PARKING ISLAND AS DEFINED

SURVEYOR'S CERTIFICATE

I, D. GARY HUTCHESON, DO WITH PROPER MONUMENTS TO BOUNDARY BEING DESCRIBED SITUATED IN THE NORTHWEST RANGE, 1, EAST, WILLAMETTE RANGE, 1, EAST, MULTNOMAH COUNTY, OREGON, AND ALSO SHERLOCK AVENUE AND BEGINNING AT THE INTERSECTION OF SHERLOCK AVENUE AND THE SOUTHEAST THE NORTHEAST CORNER OF RIGHT-OF-WAY LINE OF NW 21 TO A POINT ON THE RIGHT-OF-WAY LINE AND RUNNING NORTHEASTERLY LINE OF SA 41° 18' 30" WEST ON THE SOI OF 25.00 FEET; THENCE ON 48° 41' 30" WEST, A DISTANCE OF NW 21 AVENUE EXTEND 21ST AVENUE AND THE EXT FEET TO THE POINT OF BEI

Exhibit B

- 1)
- 2)
- 3)
- 4)